85-916

No. _____

Supreme Court, U.S.
FILED
NOV 17 1985
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE LAW FIRM OF DANIEL P. FOSTER, P.C.
Petitioners,

-against-

UNITED STATES OF AMERICA
Respondents.

SUPPLEMENTAL APPENDIX

KIT CONELLY DECIOUS
THE LAW FIRM OF
DANIEL P. FOSTER, PC
145 West 55th Street
Suite 15A
New York, New York 10019

Attorneys for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

THE LAW FIRM OF DANIEL P. FOSTER, P.C.

Petitioners,

-against-

UNITED STATES OF AMERICA

Respondents.

ERRATA SHEET

A. Delete pages A-1 through A-5 of the original appendix in favor of pages A-1 through A-4 in the supplemental appendix.

B. Delete pages A-6 through A-10, A-16 and A-19 of the original appendix.

Judgment of the United States Court of Appeals for the Second Circuit, Dismissing Appeal

United States Court of Appeals

for the

Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the nineteenth day of July, one-thousand nine hundred and eighty-five.

Present: Honorable Lawrence W. Pierce,
Honorable George C. Pratt,
Circuit Judges
Honorable Charles E. Stewart,* (sic)
District Judge

IN RE EX PARTE DECIOUS, ET AL.,

IN RE "SEARCH WARRANTS"

- - - - - - - - - - - - - - -

THE LAW FIRM OF DANIEL P. FOSTER, P.C.,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

No. 85-6147

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the appeal from order of said District Court be and it hereby is dismissed in accordance with the oral opinion rendered in open court.

Elaine B. Goldsmith,
Clerk

By: Edward J. Guardaro,
Deputy Clerk

*United States District Judge for the Southern District of New York sitting by designation.

Transcript of the United States Court of Appeals for the Second Circuit, Oral Opinion Dismissing Appeal

UNITED STATES COURT OF APPEALS

For The Second Circuit

In re "Search Warrants"

Ex Parte DECIOUS, et al.,

BEFORE: Honorable Lawrence W. Pierce,
Honorable George C. Pratt,
Circuit Judges
Honorable Dudley B. Bonsal
District Judge

U.S. District Court
Foley Square
New York, New York

July 19, 1985
1:15 P.M.

THE COURT: With respect to the appeal bearing docket number 856147, this appeal seeks vacature and remand of Judge Nickerson's ruling declining to exercise jurisdiction over a Rule 41(e) motion made by the firm.

The Government represented to Judge Nickerson and the firm that it was willing to return the property seized during the search of the firm's premises.

The firm continues to seek 41(e) relief, however, and its avowed intent in pressing this appeal is to obtain suppression of the evidence seized during the search, and the fruits thereof.

It is clear to us that the motion sought more than the mere return of the property. Therefore, under the 1962 Supreme Court case of DaBella (sic) versus United States, 369 U.S. 121 and its progeny, Judge Nickerson's ruling is not appealable at this time.

The appeal is dismissed and it is so ordered.

Thank you both.

Transcription of Order of July 19, 1985